

APPEAL NO. 032981
FILED JANUARY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 9, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not include an injury to the lumbar spine at L4-5 and L5-S1. The claimant appeals, contending that his compensable injury includes an injury at L4-5 and L5-S1 because he had no problem before his injury of _____. No response was received from the respondent (carrier).

DECISION

Affirmed as reformed.

We reform Finding of Fact No. 1.B. to reflect that the parties stipulated that on _____, the employer had workers' compensation insurance with Safeco Insurance Company of America (not American Home Assurance Company).

The claimant attached to his appeal a letter from his treating doctor dated October 17, 2003, which was not in evidence. The opinion expressed by the treating doctor in the October 17, 2003, letter is essentially the same opinion he expressed in his letter of August 8, 2003, which was in evidence. Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. We do not consider the treating doctor's letter that is attached to the claimant's appeal to be newly discovered evidence because it is cumulative of other evidence in the CCH record, with due diligence it probably could have been secured prior to the CCH, and it would probably not produce a different result if we were to remand the case to the hearing officer to consider that letter. See Jackson v. Winkle, 660 S.W.2d 807 (Tex. 1983).

Conflicting evidence, including conflicting medical opinions, was presented at the CCH on the disputed issue of whether the claimant's compensable injury includes an injury to the lumbar spine at L4-5 and L5-S1. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. It is clear that the hearing officer was not persuaded that the compensable injury caused an injury to the lumbar spine at L4-5 and L5-S1 by way of the aggravation of a preexisting condition or otherwise. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination on the disputed issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **SAFECO INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEON CROCKETT
1600 NORTH COLLINS BOULEVARD, SUITE 300
RICHARDSON, TEXAS 75080.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge